

No. 2467

United States
Circuit Court of Appeals
For the Ninth Circuit.

SOUTHERN PACIFIC COMPANY, a Corporation,
and TONOPAH & GOLDFIELD RAIL-
ROAD COMPANY, a Corporation,

Plaintiffs in Error,
vs.

GOLDFIELD CONSOLIDATED MILLING AND
TRANSPORTATION COMPANY, a Corpo-
ration,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the Northern District of California,
Second Division.

Filed

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F. D. Monckton,
Clerk.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States, in and for
the Northern District of California, First Division.*

(No. 15,700.)

GOLDFIELD CONSOLIDATED MILLING &
TRANSPORTATION COMPANY, a Corporation,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
and TONOPAH & GOLDFIELD RAIL-
ROAD COMPANY, a Corporation,

Defendants.

Complaint.

Comes now the plaintiff, Goldfield Consolidated Milling & Transportation Company, and for its complaint herein alleges:

I.

That the plaintiff, Goldfield Consolidated Milling & Transportation Company, was at all of the times in this complaint stated, ever since has been and is now a corporation duly organized, created and existing under and by virtue of the laws of the State of Wyoming, with its principal office and place of business in the town of Goldfield, in the State of Nevada.

II.

That the defendant, Southern Pacific Company, was at all of the times in this complaint stated, ever since has been and is now a corporation, duly created, organized and existing under and by virtue of the laws of the State of Kentucky, maintaining a

principal operating office and place of business in the City and County of San Francisco, and State of California and as such corporation was and is a common carrier for hire.

III.

That the defendant, Tonopah & Goldfield Railroad Company, was [1*] at all of the times in this complaint stated, ever since has been and is now a corporation duly created and existing under and by virtue of the laws of the State of Nevada, with a principal office and place of business in the town of Goldfield in the State of Nevada, and as such corporation was and is a common carrier for hire.

IV.

That heretofore in the month of October, 1910, the plaintiff caused to be shipped over the lines of the defendants from Youngstown, Ohio, to Goldfield, Nevada, a carload of steel window-sash and parts, weight of 21,399 pounds, and that the freight charge for the transportation of said articles was Three and Forty-four Hundredths (\$3.44) Dollars per hundred pounds on a minimum basis of 30,000 pounds per car, and the amount of freight paid by the plaintiff to the defendant for said transportation was the sum of One Thousand and Thirty-two (\$1,032) Dollars. That at the time of the movement of the same freight, there was no joint through rate applicable to the traffic and the said charges were made up by applying a commodity rate of One and Thirty Hundredths (\$1.30) Dollars from Youngstown, Ohio, to Sacramento, California and a class rate of Two

*Page number appearing at foot of page of original certified Record.

and Fourteen Hundredths (\$2.14) Dollars from Sacramento, California, to Goldfield, Nevada. That at that time there was a published commodity rate of sixty-five (65¢) cents per hundred pounds on wooden window-sash in carloads from Sacramento, California, to Goldfield, Nevada.

V.

That on the 9th day of August, 1912, and within two (2) years from the date of said shipment and its cause of action accrued, this plaintiff as complainant instituted a certain proceeding before the Interstate Commerce Commission at Washington, D. C., and filed [2] its complaint therein, whereby the plaintiff as such complainant attacked the rate above mentioned applied upon the movement of said steel window-sash and parts as unreasonable to the extent that said charges exceeded the charge that would have accrued on said shipment upon the basis of wooden window and sash. That said petition before the Interstate Commerce Commission was docketed as No. 5064 and that said complainant in said proceeding in addition to attacking said rate as unreasonable, also asked that the said Commission order the defendants to make reparation to this plaintiff in the sum of Four hundred and forty-seven (\$447.00) Dollars, together with interest thereon, from November 25, 1910. That said defendants filed answers to said complaint before the Interstate Commerce Commission; and that issues were duly made and thereafter heard and tried and that the said Interstate Commerce Commission thereafter and upon the 8th day of April, 1913, duly decided said

issue and filed its written opinion, being No. 2281, containing its conclusions and order, a copy of which is hereunto attached and marked Exhibit "A" and made a part of this complaint.

VI.

That said report and order were thereupon forthwith duly served upon the defendants Southern Pacific Company and Tonopah & Goldfield Railroad Company and that the said defendants and each of them have failed, neglected and refused and still fail, neglect and refuse to comply with and obey said order of said Commission and pay over to this complainant the said sum of Four Hundred and Forty-seven (\$447.00) Dollars, together with interest thereon from November 25, 1910, and that said sum of Four Hundred and Forty-seven (\$447.00) Dollars, together with interest thereon, is still due, owing and unpaid from the said defendants to this plaintiff. [3]

VII.

That the plaintiff has made demand upon the said defendants for the payment of said sum of Four Hundred and Forty-seven (\$447.00) Dollars, together with interest thereon, but said demand has been refused.

That said plaintiff is compelled to resort to this action for the collection of said sum as provided by law, and that a reasonable attorneys' fee for the bringing, prosecuting and maintaining of this action is the sum of Two Hundred and Fifty (\$250.00) Dollars.

WHEREFORE plaintiff prays judgment in favor of the plaintiff, Goldfield Consolidated Milling & Transportation Company, against the defendants Southern Pacific Company and Tonopah & Goldfield Railroad Company for the sum of Four Hundred and Forty-seven (\$447.00) Dollars, together with interest thereon at the rate of seven (7%) per cent per annum from the 25th day of November, 1910, and for all costs of this action, and for the further and additional sum of Two Hundred and Fifty (\$250.00) Dollars as and for an attorneys' fee for the bringing, prosecuting and maintaining of this action for the attorneys of record for the plaintiff herein, and for such other and further relief as may be just and proper in the premises.

BROWN & BAER,
Attorneys for Plaintiff. [4]

State of California,

City and County of San Francisco,—ss.

Chas L. Brown, being duly sworn, on oath states:

That he is a member of the firm of Brown & Baer and as such is one of the attorneys for the plaintiff in the above-entitled action that the plaintiff Goldfield Consolidated Milling & Transportation Company is a corporation organized under the laws of the State of Wyoming, with its principal office and place of business in the State of Nevada, and that it is absent from the State of California and from the City and County of San Francisco, where this affiant has his office, and that none of the officers of said corporation are in the State of California or in the City and County of San Francisco, where this

affiant has his office, and that this affidavit and verification to the foregoing complaint is made for and on behalf of said plaintiff and that the facts set forth in said complaint are within the knowledge of this affiant, and for these reasons this verification is made by affiant, and that affiant has read the above and foregoing complaint and knows the facts therein set forth and that the same are true of his own knowledge, except as to those matters which are therein set forth upon information and belief and as to those matters, affiant believes it to be true.

CHAS. L. BROWN.

Subscribed and sworn to before me this 11th day of October, 1913.

W. B. MALING,
Clerk U. S. District Court, Northern District of
California. [5]

Exhibit "A" [to Complaint].

OPINION No. 2281.

INTERSTATE COMMERCE COMMISSION.

No. 5064.

GOLDFIELD CONSOLIDATED MILLING &
TRANSPORTATION COMPANY

vs.

CHICAGO & ERIE RAILROAD COMPANY et al.

Submitted November 30, 1912—Decided April 8,
1913.

Charges for the transportation of a carload of steel window sash from Youngstown, Ohio, to Goldfield, Nev., at a combination through rate based on Sacramento, Cal., found unreasonable to the

extent that the portion of the through rate from Sacramento to Goldfield exceeded the rate contemporaneously in effect from and to the same points on wooden window-sash in carloads. Reparation awarded.

GEORGE S. MINOTT, for Complainant.

C. W. DURBROW, for Union Pacific Railroad Company and Southern Pacific Company.

HUGH K. BROWN, for Tonopah & Goldfield Railroad Company.

REPORT OF THE COMMISSION.

By the COMMISSION:

Complainant, a corporation engaged in business at Goldfield, Nev., by petition, filed August 9, 1912, alleges that it was charged an unreasonable rate for the transportation of a carload of steel articles from Youngstown, Ohio, to Goldfield, Nev., and asks reparation.

In October, 1910, complainant shipped over defendant's lines from Youngstown, Ohio, to Goldfield, Nev., a carload of steel window-sash, and parts, of the weight of 21,399 pounds, for which transportation charges were collected at a rate of \$3.44 per 100 pounds, [6] on a minimum of 30,000 pounds, amounting to \$1,032. There was no joint through rate applicable to the traffic, and the charges were made up of a commodity rate of \$1.30 from Youngstown, to Sacramento, Cal., and a class rate of \$2.14 from Sacramento to Goldfield. At the time the shipment moved there was a published commodity rate of 65 cents per 100 pounds on wooden window-sash

in carloads from Sacramento to Goldfield, which rate is still in force. Complainant contends that the charges were unreasonable to the extent that they exceeded charges that would have accrued at a through rate of \$1.95 per 100 pounds, made up of \$1.30 to Sacramento and 65 cents thence to Goldfield; or, in other words, that the rate on steel window-sash should not exceed the rate on wooden window-sash.

In transcontinental tariffs steel sash and wooden sash are carried at the same carload rates, both westbound and eastbound. Official classification names each article fifth class, in carloads, and southern classification sixth class. Western classification accords iron or steel window-sash fourth class and wooden window-sash fifth class. The former article loads heavier than the latter.

Defendants say the wide difference in the rates from Sacramento to Goldfield is due to the fact that the wooden sash rate applies to forest products generally, including blinds, door sash, mouldings, etc. Considering the two commodities from a transportation viewpoint, and the fact that both are carried at the same rates in transcontinental tariffs and in the official and southern classifications, the explanation offered is not convincing.

Upon the facts of record, we are of opinion and find that the rate from Sacramento to Goldfield, charged as part of the through rate from Youngstown to Goldfield, was unreasonable to the extent that it exceeded the rate contemporaneously in effect on wooden [7] window-sash in carloads, from and

to the same points, and a rate not to exceed the wooden sash rate will be prescribed for the future.

We further find that complainant made the shipment in accordance with the above statement of facts and paid charges thereon at the rate herein found to have been unreasonable; that complainant has been damaged to the extent of the difference between the amount paid and the amount which it would have paid at a combination through rate of \$1.95 per 100 pounds, made up of \$1.30 to Sacramento, Cal., and 65 cents beyond, and that complainant is therefore entitled to an award of reparation against the Southern Pacific Company and Tonopah & Goldfield Railroad Company in the sum of \$447, with interest from November 25, 1910. An order will be entered accordingly. [8]

ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 8th day of April, A. D., 1913.

No. 5064.

THE GOLDFIELD CONSOLIDATED MILLING
& TRANSPORTATION COMPANY,

vs.

CHICAGO & ERIE RAILROAD COMPANY; ERIE
RAILROAD COMPANY; ELGIN, JOLIET
& EASTERN RAILWAY COMPANY; CHI-
CAGO & NORTH WESTERN RAILWAY

COMPANY; UNION PACIFIC RAILROAD COMPANY; SOUTHERN PACIFIC COMPANY; and TONOPAH & GOLDFIELD RAILROAD COMPANY.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, that defendants Southern Pacific Company and Tonopah & Goldfield Railroad Company be, and they are hereby, notified and required to cease and desist, on or before July 1, 1913, and for a period of two years thereafter to abstain, from charging, demanding, collecting, or receiving as a part of the through rate from Youngstown, Ohio, to Goldfield, Nev., their present rate for the transportation of steel window-sash in carloads from Sacramento, Cal., to Goldfield, Nev., which rate is found in said report to be unreasonable.

IT IS FURTHER ORDERED, that said defendants Southern Pacific Company and Tonopah & Goldfield Railroad Company be, and they are hereby, notified and required to establish, on or before July 1, 1913, upon statutory notice to the Interstate Commerce Commission [9] and the general public by filing and posting in the manner prescribed in Section 6 of the act to regulate commerce, and for a period of two years after said July 1, 1913, to main-

tain and apply to the transportation of steel window-sash in earloads from Sacramento, Cal., to Goldfield, Nev., as part of the through rate from Youngstown, Ohio, to Goldfield, Nev., a rate not in excess of the rate contemporaneously in effect on wooden window-sash in earloads from and to said points, which relation of rates is found in said report to be reasonable.

AND IT IS FURTHER ORDERED, That said defendants Southern Pacific Company and Tonopah & Goldfield Railroad Company be, and they are hereby, authorized and directed to pay unto complainant, The Goldfield Consolidated Milling & Transportation Company, on or before July 1, 1913, the sum of \$447, with interest thereon at the rate of 6 per cent per annum from November 25, 1910, as reparation on account of a rate charged for the transportation of a carload of steel window-sash and parts from Youngstown, Ohio, to Goldfield, Nev., which rate so charged has been found to have been unreasonable, as more fully and at large appears in and by said report of the Commission.

By the Commission,

[Seal]

GEORGE B. McGINTY,
Secretary.

[Endorsed]: Filed Oct. 11, 1913. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [10]

[**Summons.**]

UNITED STATES OF AMERICA.

District Court of the United States, Northern District of California, Second Division.

GOLDFIELD CONSOLIDATED MILLING &
TRANSPORTATION CO., a Corp.,
Plaintiff,

vs.

SOUTHERN PACIFIC CO., a Corporation, and
TONOPAH & GOLDFIELD RAILROAD
CO., a Corporation,

Defendants.

Action brought in said District Court, and the Complaint Filed in the Office of the Clerk of said District Court, in the City and County of San Francisco.

To the President of the United States of America,
Greeting: To Southern Pacific Company, a Corporation, and Tonopah & Goldfield Railroad Company, a Corporation, Defendants.

YOU ARE HEREBY DIRECTED TO APPEAR, and answer the Complaint in an action entitled as above, brought against you in the District Court of the United States, in and for the Northern District of California, Second Division, within ten days after the service on you of this Summons—if served within this county; or within thirty days if served elsewhere.

And you are hereby notified that unless you appear and answer as above required, the said plaintiff will

take judgment for any money or damages demanded in the Complaint, as arising upon contract, or it will apply to the Court for any other relief demanded in the Complaint.

WITNESS the Honorable WILLIAM C. VAN FLEET, Judge of said District Court, this 11th day of October, in the year of our Lord one thousand nine hundred and thirteen and of our Independence the one hundred and thirty-eighth.

[Seal]

WALTER B. MALING,
Clerk.

By J. A. Schaertzer,
Deputy Clerk. [11]

RETURN ON SERVICE OF WRIT.

United States of America,
Northern District of California,—ss.

I hereby certify and return that I served the annexed Summons on the therein named Southern Pacific Company (a corporation), by handing to and leaving a copy together with a bill of Complaint attached thereto with H. A. Jones, who is Asst. Treasurer of the Southern Pacific Co., a corporation, personally, at San Francisco, in said District on the 14th day of October, 1913.

C. T. ELLIOTT,
U. S. Marshal.

By Paul J. Arnerich,
Deputy.

RETURN ON SERVICE OF WRIT.

United States of America,
Northern District of California,—ss.

I hereby certify and return that I served the annexed Summons on the therein named Tonopah & Goldfield Railroad Company, a corporation, by handing to and leaving a copy together with a bill of Complaint attached thereto with John McLaren, Gen. Agent Tonopah & Goldfield Railroad Company, a corporation, personally, at San Francisco, in said District, on the 14th day of October, 1913.

C. T. ELLIOTT,

U. S. Marshal.

By Paul J. Arnerich,

Deputy.

[Endorsed]: Filed Oct. 18, 1913. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [12]

*In the District Court of the United States, in and for
the Northern District of California, Second Di-
vision.*

No. —.

GOLDFIELD CONSOLIDATED MILLING and
TRANSPORTATION COMPANY, a Cor-
poration,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion, and TONOPAH and GOLDFIELD
RAILROAD COMPANY, a Corporation,
Defendants.

Demurrer to Complaint.

The defendants, Southern Pacific Company and Tonopah and Goldfield Railroad Company, demur to the complaint of plaintiff in the above-entitled action and to the whole of said complaint, and as grounds for demurrer thereto they specify:

1. That said complaint does not state facts sufficient to constitute a cause of action.

2. That said complaint does not state facts sufficient to constitute a cause of action against defendant, Southern Pacific Company.

3. That said complaint does not state facts sufficient to constitute a cause of action against defendant, Tonopah and Goldfield Railroad Company.

4. That said complaint does not set forth briefly or at all the causes for which plaintiff claims damages as prescribed in Section 16 of the Act to regulate commerce (24 Statutes at Large, page 379), as amended up to the date hereof.

5. That said complaint contains no allegation that [13] the plaintiff has sustained any damages or damage in consequence of its having been charged by defendants and of its having paid to them for the transportation of the shipment mentioned in the complaint the rate and the amount of freight which in paragraph IV of said complaint it is alleged to have been charged and to have paid on said shipment, or that it has sustained any damages or damage in consequence of defendants having failed to comply with the order of the Interstate Commerce Commission that they pay to plaintiff the sum of Four Hun-

dred and Forty-seven Dollars (\$447.00), with interest thereon from November 25, 1910, at six per cent per annum, as reparation on account of the rate charged by them on said shipment, as in said complaint averred; and it is not alleged in the complaint that the plaintiff has been in any way damaged or injured by or in consequence of any of the facts alleged in said complaint or appearing therein.

6. That said complaint contains no allegation that the rate charged by the defendant on the shipment mentioned therein was unreasonable and excessive or was otherwise or in any particular contrary to law.

WHEREFORE, said defendants pray the judgment of this Honorable Court whether they or either of them shall be compelled to make any further or other answer to the said complaint or to any of the matters and things therein contained, and to be hence dismissed with their and each of their costs in this behalf sustained.

HUGH H. BROWN,
HENLEY C. BOOTH,
FRANK C. CLEARY and
GEORGE D. SQUIRES.

Attorneys for Defendants. [14]

Service of the within Demurrer is admitted this 3d day of Nov., 1913.

BROWN & BAER,
Attorneys for Plaintiff.

[Endorsed]: Filed November 3d, 1913. W. B. Maling, Clerk. [15]

At a stated term, to wit, the November term, A. D. 1913, of the District Court of the United States of America, in and for the Northern District of California, Second Division, held at the courtroom in the City and County of San Francisco, on Monday, the 10th day of November, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 15,700.

GOLDFIELD CONSOLIDATED MILLING &
TRANSPORTATION CO.

vs.

SOUTHERN PACIFIC CO. et al.

Order Overruling Demurrer.

Defendant's demurrer came on this day to be heard, no one being present in support of demurrer and counsel for plaintiff being present in opposition thereto. After consideration thereof it was ordered that said demurrer be and the same is hereby overruled. [16]

*In the District Court of the United States, in and for
the Northern District of California, Second Di-
vision.*

No. 15,700.

GOLDFIELD CONSOLIDATED MILLING &
TRANSPORTATION COMPANY, a Cor-
poration,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion, and TONOPAH & GOLDFIELD RAIL-
ROAD COMPANY, a Corporation,

Defendants.

Answer.

The defendants, Southern Pacific Company, a corporation, and Tonopah & Goldfield Railroad Company, a corporation, for answer to the complaint of plaintiff on file in the above-entitled action,—

Deny that a reasonable attorneys' fee for the bringing, prosecuting or maintaining of this action by plaintiff is the sum of two hundred and fifty dollars (\$250).

As a further and separate answer and defense to the action, these defendants allege that in the proceeding which the plaintiff instituted before the Interstate Commerce Commission at Washington, D. C., on the 9th day of August, 1912, wherein it attacked as unreasonable the rates applied by defendants on the shipment mentioned in said complaint, to wit: in the proceeding referred to in

paragraph V of the complaint, no evidence was introduced or offered, and no evidence was heard by the Commission which would warrant or sustain the decision or written opinion, numbered 2281, rendered and filed by said Commission in said proceeding, and mentioned in said paragraph, or which would [17] warrant or sustain the findings or conclusions of the Commission, or any of them, contained in said decision; and these defendants allege that the decision and opinion rendered by said Commission in said proceedings and the findings and conclusions of the Commission therein contained were, and that each of them was, unsupported by and contrary to the evidence offered and introduced in said proceeding.

As a further and separate answer and defense to the action, these defendants allege that in the proceeding which the plaintiff instituted as complainant before the Interstate Commerce Commission, at Washington, D. C., on the 9th day of August, 1912, and which is more particularly mentioned in paragraph V of the complaint herein, no evidence was introduced or offered, and none was heard by the Commission, which would warrant or sustain that portion of its decision or opinion numbered 2281, rendered and filed in said proceeding, wherein the Commission found that the rate of \$2.14 per 100 pounds from Sacramento, California, to Goldfield, Nevada, charged as part of the through rate of \$3.44 per 100 pounds from Youngstown, Ohio, to Goldfield, Nevada, on the carload shipment of steel window-sash and parts, made by plaintiff in October, 1910, and mentioned in the complaint herein, was

unreasonable to the extent that it, to wit, said rate from Sacramento to Goldfield exceeded the rate contemporaneously in effect on wooden-sash in carloads from and to the same points, or which would warrant or sustain that portion of said decision or opinion wherein the Commission found that by reason of the complainant in said proceeding having been charged on said shipment the rate so found to be unreasonable, the complainant *at* been damaged to the extent of the difference between the amount so [18] paid and the amount which it would have paid had a combination through rate of \$1.95 per 100 pounds, made up of \$1.30 to Sacramento, California, and sixty-five cents beyond, and that said complainant was therefore entitled to an award of reparation against the defendants herein, the Southern Pacific Company and Tonopah & Goldfield Railroad Company, in the sum of four hundred and forty-seven dollars (\$447), with interest from November 25, 1910. These defendants allege that the above-mentioned portions of the decision and opinion of said Commission are, and that each of them is, unsupported by and contrary to the evidence offered and introduced in said proceeding, and that there was no evidence introduced or heard therein which would warrant or sustain a finding that the rate charged by the defendants in this action on the aforesaid shipment was to any extent, or at all, unreasonable, or that said complainant was on account of the charges made by defendants on said shipment entitled to reparation, or that it should be awarded reparation, in any amount whatsoever.

As a further and separate answer and defense to the action, these defendants allege that in the proceeding which the plaintiff instituted as complainant before the Interstate Commerce Commission, at Washington, D. C., on the 9th day of August, 1912, and which is more particularly mentioned in paragraph V of the complaint herein, no evidence was introduced or offered, and none was heard by the Commission, which would warrant or sustain the order of the Commission, made and entered upon its decision or report, containing its findings of fact and conclusions thereon, and filed in said proceeding as in said paragraph stated, or which would warrant or sustain any portion of such order, or which would warrant or sustain that particular portion of said order for the [19] enforcement of which the present action is brought, viz., that portion thereof wherein and whereby the defendants Southern Pacific Company and Tonopah & Goldfield Railroad Company are ordered, authorized and directed to pay to the complainant, the Goldfield Consolidated Milling & Transportation Company, on or before July 1st, 1913, the sum of four hundred and forty-seven dollars (\$447), with interest thereon at the rate of six per cent per annum from November 25, 1910, as reparation on account of the rate charged by them on the shipment referred to in the complaint herein, and which said rate the Commission in its said Report or Decision found to be unreasonable. And these defendants allege that said order of the Commission and the particular portion thereof just referred to are, and that each of them is, unsupported

by and contrary to the evidence offered and heard in said proceeding, and not founded upon any substantial evidence taken therein; and they furthermore allege that said order and the portion of said order mentioned are, and that each of them is, based upon findings and conclusions of the Commission contained in its decision in said proceeding, which findings or conclusions, or any of them, are not supported or sustained by the evidence, but all of which are contrary to the evidence introduced in said proceeding, and for this reason they aver that the Commission had no power or jurisdiction to make the aforesaid order either wholly or in part, and that said order of the Commission and the portion of said order hereinabove referred to are, and that each of them is, contrary to law and void.

As a further and separate answer and defense to the action, these defendants allege that the rate which was assessed and charged by them on the carload shipment of steel window-sash [20] and parts which plaintiff, in the month of October, 1910, caused to be made from Youngstown, Ohio, to Goldfield, Nevada, as averred in paragraph IV of the complaint herein, was a combination rate made up of a commodity rate of \$1.30 per 100 pounds from Youngstown, Ohio, to Sacramento, California, and a class rate of \$2.14 per 100 pounds from Sacramento, California, to Goldfield, Nevada, as in said paragraph stated, and that said constructed rate of \$3.44 per 100 pounds on a minimum carload weight of 30,000 pounds was the rate legally applicable to and chargeable upon said shipment, as shown by tariffs of the

defendants on file with the Interstate Commerce Commission and in force at the time said shipment moved. They allege that there was at that time a published commodity rate of 65 cents per 100 pounds on wooden window-sash and other lumber products in carloads from Sacramento, California, to Goldfield, Nevada; but they aver that said rate last mentioned could not for a number of reasons be properly or legally applied as a factor entering into the combination rate chargeable on the above mentioned shipment. They aver that said commodity rate of 65 cents per 100 pounds between Sacramento and Goldfield is, and that it was at the time the aforesaid shipment moved, a rate applying not merely on shipments of wooden window-sash but on shipments of many similar products, such as lumber, doors, blinds, posts, flooring and the like, all grouped and embraced in the defendants' published tariffs under the general heading of "Forest Products." They aver that the transportation conditions governing the local movement of wooden window-sash and parts between Sacramento and Goldfield, whether in straight carload lots or in mixed carload lots with other forest products, are, and that they were at the time said shipment moved, entirely different from those which govern, and then governed, the movement of steel or iron [21] window-sash and parts, or other steel or iron products, between these two points, and that no relation whatever exists between the conditions obtaining in these two distinct classes of shipments. In this behalf they allege that wooden window-sash is a perishable and comparatively cheap product and

that steel or iron window-sash is a stable product and an article of much greater value than wooden sash and that it loads lighter, and in addition, that shipments of wooden window-sash are made, and at or about the time said shipment moved were made, over the lines of the defendants in large volume, but that very few shipments of steel or iron window-sash are made, or were then made, over their said lines. They further aver that the aforesaid commodity rate applying on wooden window-sash and other lumber forest products from Sacramento to Goldfield, is, and at the times in the complaint mentioned was a materially lower rate than the class rate of \$2.14 per 100 pounds applying on iron and steel window-sash and other iron and steel articles between the same points, this fact being due to the great difference in value between the two classes of shipments and the other circumstances above mentioned. Said lumber forest product rate is moreover, and at all times has been a highly competitive rate. The defendants are, and they were at the time the above shipment moved, large lumber carrying roads and they carry, and then carried, many shipments of lumber forest products into and from Tonopah and Goldfield, in the State of Nevada, and vicinity, and in so doing they have had to meet the competition of other carriers, operating from San Pedro, California, to and from said Nevada points, and which carry commodities of the same character to the same markets. This competition has been for a number of years last past very active and has forced down said rate on wooden sash and other lumber products to an [22] unreason-

ably and abnormally low figure, and such rate was voluntarily fixed by the defendants at such figure simply to enable them to meet the aforesaid competition of other carriers transporting similar lumber products to and from Tonopah and Goldfield, and vicinity.

For all the foregoing reasons these defendants allege that said commodity rate of 65 cents per 100 pounds on lumber products from Sacramento to Goldfield cannot be taken as a measure of a reasonable rate between these points on wooden window-sash or other lumber products, and much less as the measure of a reasonable rate on steel or iron window-sash, a much more valuable commodity moving in considerably less volume and under different traffic conditions, and that it is and was at the time the above shipment moved a rate wholly inapplicable to shipments of steel or iron window-sash. And they further allege that the Interstate Commerce Commission in finding and deciding in the proceeding which was instituted before it by plaintiff on the 9th day of August, 1912, and which is more particularly referred to in paragraph V of the complaint, that the rate from Sacramento to Goldfield charged as part of the through rate from Youngstown to Goldfield on the aforesaid shipment was unreasonable to the extent that it exceeded the rate contemporaneously in effect on wooden window-sash in carloads in and from the same points, and, therefore, in effect, that the rate last mentioned should be applied to said shipment, and that the complainant was hence entitled to reparation in the sum claimed by it in said

proceeding, so found and decided contrary to law and to the evidence adduced before it in such proceeding and without any substantial evidence to support its said finding or decision, or its order of reparation entered thereon. [23]

WHEREFORE, these defendants pray that plaintiff take nothing by its said action, and that defendants be hence dismissed and that they recover their costs of suit.

HUGH H. BROWN,
HENLEY C. BOOTH,
C. W. DURBROW and
GEO. D. SQUIRES,
Attorneys for Defendants.

State of California,
City and County of San Francisco,—ss.

S. N. Bostwick, being duly sworn, deposes and says: That he is an officer, to wit, Assistant General Freight Agent, of Southern Pacific Company, one of the defendants in the above-entitled action, and that as such officer he is familiar with the matters and things mentioned in the foregoing answer, and is qualified to make this affidavit for and on behalf of said corporation; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge except as to the matters which are therein stated on information or belief and as to those matters that he believes it to be true.

S. N. BOSTWICK.

Subscribed and sworn to before me this 20th day of December, 1913.

[Seal]

HUGH T. SIME,
Notary Public in and for the City and County of San Francisco, State of California. [24]

Service of the within Answer is admitted this 20th day of December, 1913.

BROWN & BAER,
Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 20, 1913. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [25]

*In the District Court of the United States, in and for
the Northern District of California, Second Di-
vision.*

No. 15,700.

GOLDFIELD CONSOLIDATED MILLING &
TRANSPORTATION COMPANY, a Corpo-
ration,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
and TONOPAH & GOLDFIELD RAILROAD
COMPANY, a Corporation,

Defendants.

Amendments to Answer of Defendants.

The defendants, Southern Pacific Company, a corporation, and Tonopah & Goldfield Railroad Company, a corporation, file, as of course, the following amendments to their answer heretofore filed in the above-entitled action, viz.:

1. In line 12, page 6, of said answer, between the word "above" and the word "mentioned," insert the words "and hereinafter."
2. In line 26, page 6, of said answer, strike out the word "simply," between the words "figure" and "to."

HUGH H. BROWN,
H. C. BOOTH,
C. W. DURBROW and
GEO. D. SQUIRES,
Attorneys for Defendants. [26]

State of California,
City and County of San Francisco,—ss.

S. N. Bostwick, being duly sworn, deposes and says: That he is an officer, to wit, Assistant General Freight Agent, of Southern Pacific Company, one of the defendants in the above-entitled action, and that as such officer he is familiar with the matters and things mentioned in the foregoing amendments, and is qualified to make this affidavit for and on behalf of said corporation; that he has read the foregoing amendments to defendants' answer in said action, and knows the contents thereof and that the same are true of his own knowledge.

S. N. BOSTWICK.

Subscribed and sworn to before me this 25th day
of February, 1914.

[Seal]

[Seal] HUGH T. SIME,
Notary Public in and for the City and County of
San Francisco, State of California.

Copy of the within amendments received this 26th day of February, 1914.

BROWN & BAER,
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 26, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [27]

*In the District Court of the United States Northern
District of California, Second Division.*

#15,700.

GOLDFIELD CONSOLIDATED MILLING AND
TRANSPORTATION COMPANY,

vs.

SOUTHERN PACIFIC COMPANY et al.

Stipulation Waiving Jury.

Trial of this cause by jury is hereby waived.

Dated this Mch. 2, 1914.

BROWN & BAER,
Attys. for Plaintiff.
H. H. BROWN,
H. C. BOOTH,
C. W. DURBROW and
GEO. D. SQUIRES,
Attys. for Defendants.

[Endorsed]: Filed March 2d, 1914. Walter B.
Maling, Clerk. [28]

*In the District Court of the United States, in and for
the Northern District of California, Second Di-
vision.*

No. 15,700.

GOLDFIELD CONSOLIDATED MILLING &
TRANSPORTATION COMPANY, a Corpo-
ration,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
and TONOPAH & GOLDFIELD RAILROAD
COMPANY, a Corporation,

Defendants.

Judgment.

This cause having come on regularly for trial on the 27th day of March, 1914, being a day in the March, 1914, Term of said Court, before the Court sitting without a jury, a trial by jury having been duly waived by stipulation filed; C. L. Brown, Esq., appearing as attorney for plaintiff and C. W. Durbrow, Esq., appearing as attorney for the defendants; evidence having been introduced on behalf of the plaintiff and no evidence having been offered by the defendants, and the cause having been argued and submitted to the Court and the Court being fully advised in the premises, having ordered that judgment be entered in favor of plaintiff and against said defendants in the sum of \$447.00, together with interest thereon at the rate of 6% per annum from November 25, 1910, and for costs, together with an attor-

ney's fee in the sum of \$150.00:

Now, therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that Goldfield Consolidated Milling & Transportation Company, a corporation, plaintiff, do have and recover of and from Southern Pacific [29] Company, a corporation, and Tonopah & Goldfield Railroad Company, a corporation, defendants, the sum of Five Hundred Thirty-six and 55/100 (\$536.55) Dollars, together with an attorney's fee in the sum of One Hundred Fifty and 00/100 (\$150.00) Dollars and together with its costs in this behalf expended, taxed at \$20.50.

Judgment entered March 27, 1914.

WALTER B. MALING,

Clerk.

A true copy.

[Seal] Attest: WALTER B. MALING,
Clerk.

[Endorsed]: Filed March 27, 1914. W. B. Maling,
Clerk. [30]

*In the District Court of the United States, for the
Northern District of California.*

No. 15,700.

GOLDFIELD CONSOLIDATED MILLING &
TRANSPORTATION COMPANY, a Cor-
poration,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion, and TONOPAH & GOLDFIELD
RAILROAD COMPANY, a Corporation,

Certificate to Judgment-roll.

I, W. B. Maling, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing papers hereto annexed constitute the Judgment-roll in the above-entitled action.

ATTEST my hand and the seal of said District Court, this 27th day of March, 1914.

[Seal]

WALTER B. MALING,

Clerk.

By J. A. Schaertzer,

Deputy Clerk.

[Endorsed]: Filed March 27th, 1914. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[31]

*In the District Court of the United States, in and for
the Northern District of California, Second
Division.*

No. 15,700.

GOLDFIELD CONSOLIDATED MILLING &
TRANSPORTATION COMPANY, a Cor-
poration,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion, and TONOPAH & GOLDFIELD
RAILROAD COMPANY, a Corporation,
Defendants.

Bill of Exceptions.

BE IT REMEMBERED that on the 27th day of March, 1914, this cause came on for trial before the Court without a jury, a trial by jury having been duly waived by the written stipulation of the parties, filed herein, Honorable Wm. C. Van Fleet presiding. The plaintiff appeared by C. L. Brown, Esq., its counsel, and the defendants by C. W. Durbrow, Esq., their counsel; whereupon the following proceedings were had:

Mr. BROWN.—This is a proceeding, if the Court please, to recover an order of reparation heretofore made by the Interstate Commerce Commission after a hearing before it, and after its order directing a change in the rate on steel window-sashes from Youngstown, Ohio, to Goldfield, Nevada. The amount of the reparation involved is \$447, with 6 per cent interest from November 25th, 1913, the carriers being the defendants in this proceeding, the Southern Pacific Company, and the Tonopah & Goldfield Railroad Company, having failed and refused to comply with the order of the Commission. There is an [32] understanding between Mr. Durbrow and myself that certain evidence may be introduced under a stipulation. The stipulation is as follows: It is agreed that the plaintiff may offer in evidence a printed copy of the decision of the Interstate Commerce Commission together with the printed order of the Interstate Commerce Commission in which they decided case No. 5064, pending before it, being the case in which the order of repara-

tion now sued for was made without the same being duly certified; and in pursuance of the stipulation I now offer in evidence the printed decision and order of the Commission. I offer it in evidence and ask that it be marked and identified as "Complainant's Exhibit No. 1." (The paper referred to is thereupon introduced in evidence and hereafter appears in full under designation of "Plaintiff's Exhibit No. 1.") I presume the Court does not care to have it read at this time.

The COURT.—No; if it is the same as attached to the pleadings, I have read the pleadings.

And under the same stipulation I offer the order of the Commission in the same case in which the order was made denying the petition for rehearing and ask that it be marked "Complainant's Exhibit No. 2."

(The paper referred to is thereupon introduced in evidence and hereafter appears in full under designation of "Plaintiff's Exhibit No. 2.")

A further agreement has been made between counsel which I will now dictate into the record. It is stipulated and agreed that upon the hearing of this case either party may use the official transcript and exhibits that was made by the official reporter upon the hearing in case No. 5054 before the Interstate Commerce Commission. [33] That is your understanding, is it, Mr. Durbrow?

The COURT.—What was that again?

Mr. BROWN.—It is stipulated that either party may use the official transcript furnished by the reporter in the hearing before the Interstate Com-

merce Commission, Case No. 5064, together with the exhibits introduced, as shown by that transcript.

Mr. DURBROW.—The stipulation is to this effect: That I am willing that if the transcript of the evidence taken before the Commission has any materiality, that it may be introduced without the certification of the Secretary of the Commission.

The COURT.—You reserve the right to object to its materiality?

Mr. DURBROW.—In any particular, yes.

Said objection was overruled by the Court, to which objection the defendants, by their counsel, then and there excepted.

Mr. BROWN.—In pursuance of the stipulation I now offer in evidence from the official transcript of the hearing of said cause, pages 3 to 8, inclusive, except the last two lines on page 8 of said transcript.

Mr. DURBROW.—What is the purpose of that?

The COURT.—You had better read it.

Mr. BROWN.—I want to complete my offer, and then I will proceed to read it; and also “Exhibit 1, 2, 3 and 4” used upon the hearing of said cause before the Interstate Commerce Commission and referred to in the pages of the transcript mentioned.

Mr. DURBROW.—If your Honor please, if any part of the transcript is to be introduced in evidence the whole of it should be introduced in evidence. I would like to ask counsel for my information, as well as for the Court, the purpose of introducing [34] this transcript, or any part of it.

Mr. BROWN.—In answer to counsel the complaint in this case—under the pleadings every para-

graph of the complaint is admitted except the one which asks for an attorney's fee of \$250. A special defense or several special defenses—

The COURT.—(Intg.) For attorney's fees here or before the Commission?

Mr. BROWN.—Here. Several special defenses are set up in the answer to this effect: That in the hearing before the Interstate Commerce Commission of this cause, there was no evidence of an unreasonableness of the rate that was in question; that is pleaded as one defense. A further defense is pleaded that there was no evidence submitted to justify the Commission in making the order of reparation of \$447, the amount sued for. A further defense is that there was no evidence offered to justify the Commission in making the decision that it made finding the rate upon this particular commodity to be an unreasonable rate, it being a combination of a class rate and a commodity rate from Youngstown, Ohio, to Sacramento, California, and a class rate from Sacramento back to Goldfield. The combination being \$3.44 per hundred lbs. on steel window-sashes, the commodity shipped. The purpose of this offer is to show at that hearing there was introduced in evidence various matters and facts bearing upon all of those questions.

Mr. DURBROW.—Mr. Brown, if you will pardon me, I have no objection to the introduction of the transcript and exhibits if its purpose is to overcome the affirmative allegation in the answer that the order was not supported by the evidence, because I understand that in cases such as this or in cases where the

carrier seeks to enjoin an order of the Interstate Commerce [35] Commission, the District Court of the United States have uniformly permitted the introduction of the transcript in evidence, it being the only way that the carriers can prove there was no evidence or there was not sufficient evidence upon which a Commission could predicate its order. It may be said that the rule has been uniformly adopted by the Commerce Court and by the Circuit Court of the United States, and the only case tried in this circuit before Judges Morrow, Ross and Gilbert. I have no objection to the introduction of the whole transcript or the entire transcript in that particular, but I will object to the introduction of any part.

The COURT.—I suppose any part may be offered. You have the right to offer the whole of it.

Mr. BROWN.—The only part I want to offer is the pages showing the affirmative proof made at that hearing. (Counsel thereupon reads from the transcript commencing on page 3 “Examiner Pugh. The Interstate Commerce Commission,” down to and including the words, “The case is with the defendants,” on page 8), which hereafter appears in full under designation of “Plaintiff’s Exhibit No. 7,” in that portion of the transcript of the testimony taken before Examiner Pugh of the Interstate Commerce Commission, commencing with the words “Examiner Pugh,” on page 3 thereof, and ending with the words “the case is with the defendants” on page 8 thereof.

I now offer the various documents referred to in the transcript, being “Exhibits 1, 2, 3 and 4,” and

ask that they be so marked in this case. (Which said documents are introduced in evidence and hereafter appear in full under designation of "Plaintiff's Exhibit No. 3," "Plaintiff's Exhibit No. 4," "Plaintiff's Exhibit No. 5" and "Plaintiff's Exhibit No. 6," respectively.) [36]

I am somewhat unfamiliar with your Honor's practice on the allowance of attorney's fees in cases of this character. The law provides that where a carrier fails to comply with the order of the Commission for reparation, that the party entitled to recover such reparation shall within one year institute suit in the United States Court in the proper circuit to recover the same, and where such suit is instituted, it is necessary that the Court on hearing the case shall allow a reasonable attorney's fee to the attorney for the complainant.

The COURT.—What do you refer to, putting in evidence as to the value of services?

Mr. BROWN.—Yes, sir. In the complaint I have alleged that a reasonable fee for the bringing and prosecuting of this suit would be \$250, and I am willing to leave the matter to your Honor's judgment.

The COURT.—In cases of this character that have arisen here I have followed the method of procedure which I followed and which is generally followed in the State courts in like matters. Parties may introduce evidence if they see fit, but if not, the Court will exert its own judgment based upon its general knowledge of the value of such services, and fix the fee out of its own breast.

Mr. BROWN.—I am perfectly satisfied with that.

The COURT.—I know the statute allows a reasonable fee. Of course, where the matter is of a simple character the Court can usually reach a solution independent of evidence, and where evidence is introduced it does not feel entirely bound by it, but uses its own judgment.

Mr. BROWN.—I am perfectly willing, to leave that feature [37] of the case to your Honor's judgment, as a man of experience, and with that I will rest the case.

The COURT.—Very well.

Mr. DURBROW.—We have no evidence to offer at all, your Honor, with the exception that I ask to have the entire transcript and exhibits which were before the Commission, introduced and considered in evidence in support of the allegations of our answer.

Mr. BROWN.—There is no objection to that.

(All of that portion of the transcript heretofore introduced in evidence and designated herein as "Plaintiff's Exhibit No. 7," together with exhibits designated herein as "Plaintiff's Exhibits 3, 4, 5 and 6," and also the remainder of the transcript of the proceedings before the Interstate Commerce Commission, commencing with the name "S. N. Bostwick," on line 3 page 23 thereof, and ending with the words "matter was closed," on line 2, page 32 thereof, including the title page thereof, was thereupon introduced in evidence as "Defendant's Exhibit No. I.")

It is certified that the exhibits introduced upon the trial of said cause are as follows:

**Plaintiff's Exhibit No. 1 [Report of Interstate
Commerce Commission].**

OPINION No. 2281.

INTERSTATE COMMERCE COMMISSION.

No. 5064.

GOLDFIELD CONSOLIDATED MILLING &
TRANSPORTATION COMPANY,

vs.

CHICAGO & ERIE RAILROAD COMPANY et al.

Submitted November 30, 1912. Decided April 8,
1913. |[38]

Charges for the transportation of a carload of steel window sash from Youngstown, Ohio, to Goldfield, Nev., at a combination through rate based on Sacramento, Cal., found unreasonable to the extent that the portion of the through rate from Sacramento to Goldfield exceeded the rate contemporaneously in effect from and to the same points on wooden window sash in carloads. Reparation awarded.

GEORGE S. MINOTT, for Complainant.

C. W. DURBROW, for Union Pacific Railroad
Company and Southern Pacific Company.

HUGH H. BROWN, for Tonopah & Goldfield
Railroad Company.

REPORT OF THE COMMISSION.

By the COMMISSION:

Complainant, a corporation engaged in business at

Goldfield, Nev., by petition, filed August 9, 1912, alleges that it was charged an unreasonable rate for the transportation of a carload of steel articles from Youngstown, Ohio, to Goldfield, Nev., and asks reparation.

In October, 1910, complainant shipped over defendants' lines from Youngstown, Ohio, to Goldfield, Nev., a carload of steel window sash, and parts, of the weight of 21,399 pounds, for which transportation charges were collected at a rate of \$3.44 per 100 pounds, on a minimum of 30,000 pounds, amounting to \$1,032. There was no joint through rate applicable to the traffic, and the charges were made up of a commodity rate of \$1.30 from Youngstown, to Sacramento, Cal., and a class rate of \$2.14 from Sacramento to Goldfield. At the time the shipment moved there was a published commodity rate of 65 cents per 100 pounds on wooden window sash in carloads from Sacramento to Goldfield, which rate is still in force. Complainant contends that the charges were unreasonable [39] to the extent that they exceeded charges that would have accrued at a through rate of \$1.95 per 100 pounds, made up of \$1.30 to Sacramento and 65 cents thence to Goldfield; or, in other words, that the rate on steel window sash should not exceed the rate on wooden window sash.

In transcontinental tariffs steel sash and wooden sash are carried at the same carload rates, both westbound and eastbound. Official classification names each article fifth class, in carloads, and southern classification sixth class. Western classification accords iron or steel window sash fourth class and

wooden window sash fifth class. The former article loads heavier than the latter.

Defendants say the wide difference in the rates from Sacramento to Goldfield is due to the fact that the wooden sash rate applies to forest products generally, including blinds, door sash, moldings, etc. Considering the two commodities from a transportation viewpoint, and the fact that both are carried at the same rates in transcontinental tariffs and in the official and southern classifications, the explanation offered is not convincing.

Upon the facts of record, we are of opinion and find that the rate from Sacramento to Goldfield, charged as part of the through rate from Youngstown to Goldfield, was unreasonable to the extent that it exceeded the rate contemporaneously in effect on wooden window sash in carloads, from and to the same points, and a rate not to exceed the wooden sash rate will be prescribed for the future.

We further find that complainant made the shipment in accordance with the above statement of facts and paid charges thereon at the rate herein found to have been unreasonable; that [39½] complainant has been damaged to the extent of the difference between the amount paid and the amount which it would have paid at a combination through rate of \$1.95 per 100 pounds, made up of \$1.30 to Sacramento, Cal., and 65 cents beyond, and that complainant is therefore entitled to an award of reparation against the Southern Pacific Company and Tonopah & Goldfield Railroad Company, in the sum of \$447,

with interest from November 25, 1910. An order will be entered accordingly.

ORDER.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 8th day of April, A. D. 1913.

No. 5064.

THE GOLDFIELD CONSOLIDATED MILLING
& TRANSPORTATION COMPANY

vs.

CHICAGO & ERIE RAILROAD COMPANY;
ERIE RAILROAD COMPANY; ELGIN,
JOILET & EASTERN RAILWAY COM-
PANY; CHICAGO & NORTH WESTERN
RAILWAY COMPANY; UNION PA-
CIFIC RAILROAD COMPANY; SOUTH-
ERN PACIFIC COMPANY; and TONO-
PAH & GOLDFIELD RAILROAD COM-
PANY.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed, a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof;

IT IS ORDERED, That defendants Southern Pacific Company and Tonopah & Goldfield Railroad Company be, and they are hereby, notified and re-

quired to cease and desist, on or before July 1, 1913, and for a period of two years thereafter to abstain, from [40] charging, demanding, collecting, or receiving as a part of the through rate from Youngstown, Ohio, to Goldfield, Nev., their present rate for the transportation of steel window sash in carloads from Sacramento, Cal., to Goldfield, Nev., which rate is found in said report to be unreasonable.

IT IS FURTHER ORDERED, That said defendants Southern Pacific Company and Tonopah & Goldfield Railroad Company be, and they are hereby, notified and required to establish, on or before July 1, 1913, upon statutory notice to the Interstate Commerce Commission and the general public by filing and posting in the manner prescribed in section 6 of the act to regulate commerce, and for a period of two years after said July 1, 1913, to maintain and apply to the transportation of steel window sash in carloads from Sacramento, Cal., to Goldfield, Nev., as part of the through rate from Youngstown, Ohio, to Goldfield, Nev., a rate not in excess of the rate contemporaneously in effect on wooden window sash in carloads from and to said points, which relation of rates is found in said report to be reasonable.

AND IT IS FURTHER ORDERED, That said defendants Southern Pacific Company and Tonopah & Goldfield Railroad Company be, and they are hereby, authorized and directed to pay unto complainant, The Goldfield Consolidated Milling & Transportation Company, on or before July 1, 1913, the sum of \$447, with interest thereon at the rate of 6 per cent per annum from November 25, 1910, as

reparation on account of a rate charged for the transportation of a carload of steel window sash and parts from Youngstown, Ohio, to Goldfield, Nev., which rate so charged has been found to have been unreasonable, as more fully and at large appears in and by said report of the Commission.

By the Commission. [41]

[Seal]

GEORGE B. MCGINTY,
Secretary.

[Endorsed]: "U. S. Dist. Court, Nor. Dist. of Cal. Pltff. Exhibit 1. W. B. M., Clerk." [42]

Plaintiff's Exhibit No. 2 [Order of Interstate Commerce Commission Denying Petition for Rehearing].

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C. on the 18th day of June, A. D. 1913.

EDGAR E. CLARKE,
JUDSON C. CLEMENTS,
CHARLES A. PROUTY,
JAMES S. HARLAN,
CHARLES C. McCHORD,
BALTHASAR H. MEYER,
JOHN H. MARBLE,

Commissioners.

No. 5064.

THE GOLDFIELD CONSOLIDATED MILLING
& TRANSPORTATION COMPANY

vs.

CHICAGO & ERIE RAILROAD COMPANY et al.
ORDER DENYING HEARING.

Upon further consideration of the record in the above-entitled case, and of defendants' petition for rehearing,

IT IS ORDERED, That said petition for rehearing be, and the same is hereby denied.

IT IS FURTHER ORDERED, That a copy of this order be served upon each of the parties to this case.

By the Commission,
(L. S.) GEORGE B. MCGINTY,
Secretary.

[Endorsed]: "U. S. Dist. Court, Nor. Dist. of Cala., Pltff., Exhibit 2. W. B. M., Clerk." [43]

Plaintiff's Exhibit No. 3 [Docket].

Docket 5064.

Statement Billing 1 Carload Steel Window Sash and
Parts from Youngstown, O., to Goldfield, Nev.,
Oct. 25, 1910.

Car.	Article.	Min. Wt.	Rate.	Charges.	Reference Trf. Classn.
Wab. 64970	221 Steel Window Sash				T. C. Trf. ICC929.
	10 bds (62 Pcs.) do				Page 94 PFTB.
	1 bx. Steel do		1.30		Trf. 7, ICC14,
	S. L. C.		2.14		Page 28, 4th class.
	Actual Weight 21399 lbs.	30000	3.44	1032.00	West Classn. 48IC.
	Claimed should apply	30000	1.95	585.00	Page 98, Item 1 5/6.
			Reparation	447.00	

Claimed that \$1.95 per 100 lbs. should apply on basis of Trans-Continental rate \$1.30 plus rate of 65 cents per 100 lbs. found in P. F. T. B. Tariff 7, I. C. C. 14, Page 46, Item 82. However, it will be noted that this rate of 65 cents applies on *Wooden Sash* under the head of "Forest Products," and not on Steel Sash.

S. N. B.

[Endorsed]: "U. S. Dist. Court, Nor. Dist. of Cala. Pltff. Exhibit 3. W. B. M., Clerk." [44]

Plaintiff's Exhibit No. 4 [Comparison of Rates].

Comparison of Commodity Rates on Iron or
Steel Window Sash and Showing
Discrimination Against
Goldfield, Nevada.

From	To	Rate per 100#	Dis- tance Miles.	Rate per ton per Mile.	Name of Issue.	I. C. U. No.	Date Effective.	Page.	Item or Index.	Compe- titive. Yes
Chicago, Ill.,	Denver, Colo.,	.77	1034	.015	W. A. Potett	253	2/ 5/12	69	1385	Yes
Omaha, Neb.,	" "	.50	538	.02	" "	253	2/ 5/12	69	1385	"
New Orleans, La.,	" "	.77	1432	.011	" "	259	3/26/11	none	1615	"
Denver, Colo.,	Falls City, Neb.,	.50	551	.018	C. B. & Q. Ry.	9950	6/ 1/10	161	2945	"
Sacramento, Cal.,	Goldfield, Nev.,	2.14	428	.10	F. W. Gomph	14	1/20/10	46	82	"
Youngstown, Ohio,	" "	3.44	3267	.02	R. H. Countiss	929	10/10/10	94	none	"
					F. W. Gomph	14	1/20/10	46	82	"

As charged \$1.30 plus \$2.14=\$3.44

BASIS OF COMPLAINT.

Sacramento, Cal.,	Goldfield, Nev.,	.65	428	.03
Youngstown, Ohio,	" "	1.95	3267	.012
[Endorsed]: "U. S. Dist. Court, Nor. Dist. of Cal. Pltff.				

Exhibit 4. W. B. M., Clerk."

Plaintiff's Exhibit No. 5.

Sash, Window, Iron.

Western Classification No. 50. F. J. Hoffman—I.

C. C. No. 8. May 1, 1911. Page 98. Item 15.

Sash, Iron, Window (other than sheet) unglazed,
boxed or crated.

L. C. L.	C. L.	Minimum.
2nd	4th	30,000

Official Classification No. 38. R. N. Collyer. I. C. C.

No. 38. March 1, 1913.

Sash, Iron or Steel	5th	34,000
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Sash, Wooden (not glazed)	5th	24,000
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Southern Classification No. 39. W. R. Power.

I. C. C. No. 17. June 17, 1912.

Sash, Wooden (not glazed)	6th	24,000
---------------------------	-----	--------

Sash, Iron	6th	24,000
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Trans-continental Freight Bureau Tariff R. H.

Countiss' Agent, I. C. C. No. 929 October 10,
1910, Page 24.

Sash, Doors and Blinds etc., Wooden	\$1.30	30,000
-------------------------------------	--------	--------

Sash, Doors and Blinds, Iron or Steel etc.	1.30	30,000
---	------	--------

Pacific Freight Tariff Bureau Tariff No. 7 F. W.

Gomph, Agent, I. C. C. No. 14. January 20,
1910. Pages 46 and 98, Index 90, Item 82.

Sash, Doors, Blinds, Wooden, etc.	.65¢	30,000
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Sash, Iron or Steel. 4th class.	\$2.14	30,000
---------------------------------	--------	--------

[Endorsed]: "U. S. Dist. Court, Nor. Dist. of
Cala. Pltff. Exhibit 5. W. B. M., Clerk." [46]

Plaintiff's Exhibit No. 6.

I. C. C. Docket No. 5064. \$447.00.

Steel Window Sash.

STATEMENT OF THE CASE.

This complaint covers a shipment of Steel Window Sash from Youngstown, Ohio, to Goldfield, Nevada.

Rate charged is made by adding to the Youngstown, Ohio, to Sacramento, California, terminal rate of \$1.30 per hundred pounds, minimum carload weight 30,000 pounds the local back Sacramento, Cal., to Goldfield, Nev., third class \$2.14 per hundred pounds minimum 30,000 pounds.

It will be observed (see exhibit No. 1) that West bound Trans-continental tariff R. H. Countiss' I. C. C. No. 929 effective October 10, 1910, page 94 provides same rate from Eastern defined territories to California terminals on Steel Sash in carloads, that applies on Wooden Sash in carloads, further that East bound Trans-continental Tariff R. H. Countiss' Agent I. C. C. No. 934 effective August 19, 1912, page 118 item No. 700 provides similar adjustment.

Official Classification No. 38 R. N. Collyers I. C. C. No. 38 effective March 1, 1912, page 209 item 9 names 5th class rating for both articles, also Southern Classification No. 39 W. R. Powers I. C. C. No. 17, effective June 17, 1912, page 47 item 30 and page 101 item 31 provides 6th class rating for Wooden Sash and Iron Sash in carloads minimum 24,000 pounds.

This would indicate that carriers believe that the Wooden Sash rate is a reasonable rate for Steel Sash.

We contend that if any difference exists Steel Sash

is the better freight from a transportation standpoint, weight, space and liability to damage considered, notwithstanding which we [47] find that the rate on Steel Sash carloads from Sacramento, Cal., to Goldfield, Nevada, is \$2.14 per hundred pounds as against rate of 65¢ per hundred pounds for Wooden Sash carloads.

Following the precedent established by the carriers on Trans-continental traffic and lines east of the Mississippi and south of the Ohio River, we are claiming that the Wooden Sash rate is a reasonable basis for making the through rate on Steel Sash.

From examination of specific publications (see exhibit No. 1) we find a rate of .77¢ per hundred pounds Chicago, Ill., to Denver, Colorado, for Steel Sash, distance 1034 miles producing a rate per ton per mile of .015. Find this same rate .77¢ published from New Orleans, Louisiana, to Denver, Colo., distance 1432 miles producing a rate per ton per mile of .011; From Omaha, Nebraska, to Denver, Colo., rate of .50¢ per hundred pounds for 538 miles producing a rate per ton per mile .02; From Denver, Colo., to Falls City, Nebraska. .50¢ per hundred pounds for distance 551 miles producing rate per ton per mile of .018.

These figures would indicate that the rate of \$2.14 per hundred pounds from Sacramento, Cal., to Goldfield, Nevada, a distance of 428 miles producing a rate per ton per mile of .10¢ cannot be justified. Let it be remembered however that the haul from Hazen, Nevada, to Sacramento, California, and return is not actually performed.

Considering the through rate charged of \$3.44 per hundred for distance 3267 miles over the route the shipment moved; Erie R. R.; E. J. & E. C. & N. W.; U. P. R. R., S. P. Co. and T. & G. R. R. producing a rate per ton per mile of .02¢ it will be observed that this is the same rate per ton per mile Omaha, Neb., to Denver, Colo., [48] for 538 miles; further that the rate of \$1.95 per hundred pounds which we are claiming produces a rate per ton per mile of .012 for 3267 miles, which is slightly greater rate per ton per mile than earned by carriers on shipments from New Orleans, Louisiana, to Denver, Colo., a distance of 1432 miles.

We, therefore contend that the rate we ask is reasonable and just both to the carrier and shipper.

[Endorsed]: "U. S. Dist. Court, Nor. Dist. of Cal. Pltff. Exhibit 6. W. B. M., Clerk." [49]

Plaintiff's Exhibit No. 7 [Proceedings Before Interstate Commerce Commission in Goldfield Con. M. & T. Co. vs. Chicago & Erie R. R. Co.].

Stenographer's Minutes.

Before the

INTERSTATE COMMERCE COMMISSION.

Docket No. 5064.

THE GOLDFIELD CONSOLIDATED MILLING
& TRANSPORTATION COMPANY,

Complainant,

vs.

CHICAGO & ERIE RAILROAD COMPANY et al.,
Defendants.

Reno, Nevada, October 18th, 1912, 10:30 A. M.

Before: A. B. PUGH, Special Examiner.

Met pursuant to notice.

APPEARANCES:

GEORGE S. MINOTT (829 Hearst Bldg., San Francisco), Attorney for Complainant.

H. A. SCANDRETT and C. W. DURBROW (San Francisco), Attorneys for the Union Pacific Railway Company and Southern Pacific Company.

HUGH H. BROWN (Tonopah, Nev.), Attorney for the Tonopah & Goldfield Railroad Company.

[50]

PROCEEDINGS.

Examiner PUGH.—The Interstate Commerce Commission, having set for hearing at this time and place, the case of the Goldfield Consolidated Milling & Transportation Company vs. Chicago & Erie Railroad Company et al., Docket 5064, the same is now called for that purpose. Who represents the complainant?

Mr. MINOTT.—I do, if the Court please.

Examiner PUGH.—Who represents the Chicago & Erie Railroad Company?

(No response.)

Examiner PUGH.—Erie Railroad Company?

(No response.)

Examiner PUGH.—Elgin, Joliet & Eastern Railway Company?

(No response.)

Examiner PUGH.—Chicago & North Western Railway Company?

(No response.)

Examiner PUGH.—Union Pacific Railroad Company?

Mr. DURBROW.—H. A. Scandrett and C. W. Durbrow.

Examiner PUGH.—Southern Pacific Company?

Mr. DURBROW.—The same.

Examiner PUGH.—The Tonopah & Goldfield Railroad Company?

Mr. BROWN.—Hugh H. Brown.

Examner PUGH.—This case involves a carload shipment of steel window sash and window sash parts from Youngstown, Ohio, to Goldfield, Nevada, for the transportation of which it appears charges were collected at the rate of \$1.30 per hundred pounds from Youngstown to Sacramento, California, and a rate of \$2.14 per hundred pounds from Sacramento to Goldfield, or a combination through rate of \$3.44 per hundred pounds. Complainants allege [52] that the charges were unreasonable to the extent that they exceeded charges that would have accrued at the rate of \$1.30 per hundred pounds to Sacramento and a rate of 65 cents per hundred pounds from Sacramento to Goldfield, or a combination through rate of \$1.95 per hundred pounds. Reparation is asked on that basis. Is that a correct statement of your petition, Mr. Minott?

Mr. MINOTT.—That is, if the Court please.

Examiner PUGH.—Any objection to it by the defendants?

Mr. DURBROW.—No.

Examiner PUGH.—Well, proceed with the testimony. Prove the complainant is a corporation.

Mr. MINOTT.—The same evidence as in the other case.

Mr. DURBROW.—We will stipulate to that. That is admitted by the answer.

Examiner PUGH.—All of them?

Mr. DURBROW.—That the complainant corporation is a corporation.

Examiner PUGH.—Do all the answers admit that?

Mr. DURBROW.—Yes, your Honor.

Examiner PUGH.—Very well. Go ahead.

Mr. MINOTT.—With respect to the routing. I have a bill of lading here that gives the route over which the shipment traveled.

Examiner PUGH.—Very well. Annex it to the freight bill and let me look at it.

Mr. DURBROW.—Those facts are likewise admitted by the answer.

Examiner PUGH.—The bill of lading shows routing Southern Pacific Company, and I understand counsel admits that they participated in the movement? [53]

Mr. DURBROW.—Yes, your Honor.

Examiner PUGH.—And the freight bills—let me look at them a moment. It seems to have been made out against the Goldfield Consolidated Milling Company, and the complainant is the Goldfield Consolidated Milling & Transportation Company. Are they the same?

Mr. MINOTT.—The same.

Examiner PUGH.—Let the bill of lading and freight bill be received as Complainant's Exhibit Number 1.

The freight bill and bill of lading so offered and identified was received in evidence, and thereupon marked "Complainant's Exhibit Number 1," received in evidence October 19th, 1912, and attached hereto.

Mr. MINOTT.—I have here a statement showing the rates for steel window-sash from Chicago to Denver, Omaha to Denver, New Orleans to Denver, and Denver, Colorado, to Fall City, Nebraska, which shows a comparison as against the rates from Sacramento to Goldfield on the same material, and the purpose of this exhibit is to show that in the various territories that the same rate is applied on steel window-sash as is applied to wooden sash, and that the rate on wooden sash from Sacramento to Goldfield is 65 cents as against the rate for steel window-sash of \$2.14.

Examiner PUGH.—The purpose of this is to support your allegation that the rates are unreasonable?

Mr. MINOTT.—Yes, sir.

Examiner PUGH.—This may be received as Complainant's Exhibit Number 2.

The statement so offered and identified was received in evidence and thereupon marked "Complainant's Exhibit Number 2," [54] received in evidence October 18th, 1912, and is attached hereto.

Mr. MINOTT.—This exhibit shows that the Official Classification provides the same rating for wooden

sash—or for steel sash, as that applicable to wooden sash.

Examiner PUGH.—The Official Classification?

Mr. MINOTT.—The Official Classification. And also the trans-continental Freight Bureau provides a commodity rate of \$1.30 per hundred pounds for steel sash and for wooden sash; further, that the Southern Classification provides the same rate for both.

Examiner PUGH.—This may be received as Complainant's Exhibit Number 3.

The statement so offered and identified, was received in evidence and thereupon marked "Complainant's Exhibit Number 3," received in evidence October 18th, 1912, and is attached hereto.

Mr. MINOTT.—This, your Honor, is a statement of the case which shows and points out that the steel window-sash in the different territories are graded on the same rate as wooden sash.

Examiner PUGH.—Your contention is based on the exhibits already filed, I suppose?

Mr. MINOTT.—Yes.

Examiner PUGH.—Have you a copy for counsel on the other side?

Mr. MINOTT.—Yes.

Examiner PUGH.—This may be filed as Complainant's Exhibit 4.

The statement so offered and identified, was received in evidence and thereupon marked "Complainant's Exhibit Number 4," received in evidence October 18th, 1912, and is attached hereto. [55]

Mr. MINOTT.—I have nothing further.

Examiner PUGH.—You have nothing to show the similarity of conditions?

Mr. MINOTT.—Except that, and that the rate is unreasonable as compared with the rate for wooden sash between the same points.

Examiner PUGH.—The case is with the defendants.

**[Testimony of S. N. Bostwick, Taken Before
Interstate Commerce Commission.]**

S. N. BOSTWICK, was called as a witness, and being duly sworn, testified as follows:

Direct Examination.

Mr. DURBROW.—You are the assistant general freight agent of the Southern Pacific Company?

Mr. BOSTWICK.—Yes, sir.

Mr. DURBROW.—Stationed at San Francisco?

Mr. BOSTWICK.—Yes, sir.

Mr. DURBROW.—What experience have you had in the traffic business, Mr. Bostwick?

Mr. BOSTWICK.—My present position, about 16 years, and 29 years altogether with the Southern Pacific Company, in the Traffic Department.

Mr. DURBROW.—I direct your attention to Complainant's Exhibit Number 2, in which a comparison is made in the rate on steel window-sash from Chicago, Omaha, New Orleans to Denver, Denver to Fall City, and Youngstown to Denver, Colorado, and will ask you to state, if you know, why it is that the rates shown from those points to Colorado are upon the basis shown in that exhibit.

Mr. BOSTWICK.—I can't state from my personal knowledge, as we had nothing to do with the making of the rates from these [56] eastern points to Colorado, but there is a large manufacturing plant located at Bessemer—the plant of the Colorado Fuel & Iron Company—that manufactures such products, and I imagine to such competitive territory the eastern lines found it necessary to place in effect those low rates.

Mr. DURBROW.—As a general proposition, taking into consideration the fact which you must always consider in making a rate to a point where a commodity such as this is manufactured, you do have the effect of forcing the rate down to lower than a normal scale?

Mr. BOSTWICK.—It certainly would.

Mr. DURBROW.—And by comparing these rates shown in exhibit number 2 with the rates contained in other tariffs and applying in other territory, would you say that these rates are exceptionally and unreasonably low?

Mr. BOSTWICK.—Unreasonably low.

Mr. DURBROW.—Is there any comparison between the rate applying on wooden sash and steel sash from a traffic standpoint, in the territory involved in this proceeding?

Mr. BOSTWICK.—There is quite a difference in the territory involved in this proceeding, from the fact that wooden sash rated at 65 cents per hundred pounds is contained under a grouping headed “Forest products,” said grouping taking in lumber,

blinds, door sash, mouldings and other products, from California lumber producing and manufacturing points to the Tonopah and Goldfield territory. There is much building in that section or was when this rate was established. There was considerable use made of that rate on the products of lumber for the various mining enterprises, building up the town. The rate has been in effect for some time. It is [57] an abnormally low rate for the service, 516 miles, over the Sierras via Hazen, thence via a branch line to Mina, 129 miles, thence via another company the Tonopah & Goldfield Railroad Company, to Goldfield.

Mr. DURBROW.—Total haul being 516 miles.

Mr. BOSTWICK.—Total haul being 516 miles.

Mr. DURBROW.—And over an elevation of 7018 feet?

Mr. BOSTWICK.—Yes, sir; while the rate on steel window-sash is the Western Classification rate, which was so classified by representatives of all the lines west of Chicago, who meet periodically and who are traffic experts; and they have so classified it in the Western Classification. At the time of this classification, fourth class rate for steel window-sash was provided. Steel window-sash is an entirely different commodity from the forest product of wooden window-sash under the 65 cent rate named, our rate fourth class being \$2.14 per hundred pounds.

Mr. DURBROW.—Which commodity moves in greater volume?

Mr. BOSTWICK.—So far as the originating ter-

ritory and the destination in this complaint, wooden sash.

Mr. DURBROW.—State, if you know, whether there is any relation between the rates in the Official and Southern Classification, and the rates in the Western Classification on these two commodities.

Mr. BOSTWICK.—They are entirely separate classifications, covering distinct territories, and the mere fact that the official classification shows steel window-sash and wooden window-sash under the same class rate, or that the Southern Classification does likewise, I think has no bearing in this western country [58] and under the Western Classification controlling and governing this country west of Chicago. In fact, the rates under the Official Classification that would govern on wooden sash, might be high enough to warrant their application on the steel window-sash, considering volume of movement and value, liability to loss and damage, and nature of service, all of which have a bearing in the adjusting and making of freight rates. So I don't think the eastern proposition has any bearing on this Western Classification territory.

Mr. DURBROW.—You have a statement, have you not, showing the rate as constructed, giving the tariff reference?

Mr. BOSTWICK.—Yes, sir.

Mr. DURBROW.—We will file it as an exhibit, number 1, of the defendants.

Examiner PUGH.—It may be received as Defendant's Exhibit Number 1.

The statement so offered and identified, was re-

ceived in evidence, and thereupon marked "Defendants' Exhibit Number 1" received in evidence October 18th, 1912, and is attached hereto.

Mr. DURBROW.—Take the witness.

Cross-examination.

Mr. MINOTT.—Mr. Bostwick, you state that the rates in the western territory are made under a different condition than those in the eastern territory so far as the classification is concerned.

Mr. BOSTWICK.—I stated, I think, that the classifications governing the movement of freight in those three territories, under the Official Classification, under the Southern Classification, [59] and under the Western Classification, were entirely distinct from each other.

Mr. MINOTT.—Now, are you familiar with the making of the trans-continental rates?

Mr. BOSTWICK.—I am somewhat familiar with the rates, but not with the making of them.

Mr. MINOTT.—Now, the trans-continental tariff, I. C. C. 929, effective October 10th, 1910, provides the same rate for steel sash that is applicable under the wooden sash.

Mr. BOSTWICK.—That is correct.

Mr. MINOTT.—That is, to the western territory.

Mr. BOSTWICK.—I believe that is a rate of \$1.20 or \$1.30.

Mr. MINOTT.—\$1.30 on both?

Mr. BOSTWICK.—Lumber is much higher.

Mr. MINOTT.—The Official Classification provides fifth class rating for both.

Mr. BOSTWICK.—I believe it does.

Mr. MINOTT.—That is a very low rating, isn't it?

Mr. BOSTWICK.—I don't know whether it is.

Mr. MINOTT.—They run six classes, as you know.

Mr. BOSTWICK.—I know. It may be sufficiently high to satisfy the eastern lines to apply it on their wooden sash and on their steel sash.

Mr. MINOTT.—And the Southern Classification names sixth class?

Mr. BOSTWICK.—It may be satisfactory to them.

Mr. MINOTT.—This rate of 44 cents from Sacramento to Goldfield—the Southern Pacific do not actually perform the haul from Sacramento to Mina.
[60]

Mr. BOSTWICK.—They do.

Mr. MINOTT.—That is, all of the haul?

Mr. BOSTWICK.—They do.

Mr. MINOTT.—You mean to tell me in connection with the trans-continental rate that the Southern Pacific haul this steel sash to Sacramento?

Mr. BOSTWICK.—Oh, I thought you meant our line did not extend there. I mean to say that under the ruling of the Interstate Commerce Commission we are not obliged to perform the back haul when the rate is a combination on the terminal and the local back.

Mr. MINOTT.—Then the distance from Sacramento to Goldfield is 428 miles.

Mr. BOSTWICK.—It is 90 miles less than 516.

Mr. MINOTT.—Now, that produces a rate per ton per mile of 10 cents, and you do not actually perform all the service from Sacramento to Mina, in using

this \$2.14 rate added to the rate carried in the trans-continental tariff of \$1.30.

Mr. BOSTWICK.—It depends upon the routing from the east. If it came via Ogden, no; if it comes via Mojave or El Paso, it would be taken to Sacramento and we would have to perform the full service.

Mr. MINOTT.—This shipment actually moved through the Ogden gateway.

Mr. BOSTWICK.—Under those circumstances the rate is based on the terminal with the local back, and by special permission of the Commission, they do not require the back haul.

Mr. MINOTT.—You do not move any traffic through the El Paso gateway destined to Goldfield?
[61]

Mr. BOSTWICK.—Yes, we do.

Mr. MINOTT.—Well, in that event, the rate would not be based on Sacramento, would it?

Mr. BOSTWICK.—Certainly.

Mr. MINOTT.—You would move it around through the Sacramento gateway?

Mr. BOSTWICK.—It would be based upon the rate from the nearest terminal.

Mr. MINOTT.—But that would be an unnatural movement, wouldn't it?

Mr. BOSTWICK.—I should say yes, from Youngstown, Ohio.

Mr. MINOTT.—Isn't it a fact that the steel sash and wooden sash compete?

Mr. BOSTWICK.—I don't know that I can answer that question. I would ordinarily say that, as a general proposition, they do not. The wooden

sash is used for building dwellings, as well as for building factories and other such work where steel sash would not be required at all. When it comes to a smelter proposition, the Goldfield Consolidated Company, whether there it strictly competes or they require as much window-sash of steel as they do of wood, I couldn't answer that. I think as a general proposition they don't compete.

Mr. MINOTT.—From a railroad standpoint, isn't steel sash better freight than wooden sash?

Mr. BOSTWICK.—It would certainly weigh heavier for the same space occupied in a car.

Mr. MINOTT.—Isn't it the policy of the carrier in making rates to give the iron and steel articles better rates than those applicable to wooden articles, as a general proposition?

Mr. BOSTWICK.—Well, naturally we take into account the additional weight we get from the iron and steel articles, but [62] unless we thought it is absolutely necessary in filing a tariff covering a great number of articles that we handle, the value should enter into the rate-making proposition. We could not move sawdust at the rate on silk, and we could not apply as high a rate as applies on silk to move sawdust. Sawdust would not be forwarded. Therefore, as an example between extremes, we have to value things somewhat in the fixing of freight rates, so that value is taken into account.

Mr. MINOTT.—Steel sash is not subject to damage in any respect—that is, any more than wooden sash, is it?

Mr. BOSTWICK.—I don't know that it would be

any more than wooden sash. They are both subject to damage in case of wreck.

Mr. MINOTT.—Well, the carrier don't run any more risk in transporting the steel sash than he does in transporting wooden sash, does he?

Mr. BOSTWICK.—I have not examined into any large number of loss and damage claims for either of these commodities as compared with each other, and I could not answer.

Mr. MINOTT.—Well, don't you feel, in view of the rate for iron and steel articles generally, that ten cents per ton per mile is rather a high figure for this class of material?

Mr. BOSTWICK.—Not at all. I have a very high respect for the framers of the Western Classification to put it fourth class when they put these other iron articles at fifth class.

Mr. MINOTT.—That is, from a classification point of view.

Mr. BOSTWICK.—Well, that is a rate-making point of view.

Mr. MINOTT.—And the trans-continental tariff provides the same rate for both. Now, the carriers assume the same risk in transporting those articles, don't they, in the trans-continental [63] territory that they do from Sacramento to Goldfield?

Mr. BOSTWICK.—The rate on wooden sash under the trans-continental may be high enough to warrant them in applying that on steel sash, the same as under the Official Classification and the Southern Classification, but just what influence there was in making the rate the same, I don't know.

It is generally classified much higher. I couldn't testify as to that.

Mr. MINOTT.—Well, you have a statement there of the rate from Denver, Colorado, to Fall City, Nebraska, showing 50 cents per hundred pounds for steel sash, a distance of 551 miles, which results in a rate per ton per mile of one cent and eight mills. That distance is greater than the distance from Sacramento to Goldfield, and there is a difference in the rate of \$1.64 a hundred. Now, that is through a mountainous country.

Mr. BOSTWICK.—That looks to me like a reasonable rate. The rate from Omaha to Denver being the same 50 cents, the manufacturer in Colorado, getting back to Fall City was given 50 cents. I think that would naturally explain that, one from one direction and the other from the other, the same distance.

Mr. MINOTT.—That is all.

Mr. DURBROW.—That is all. We have no further evidence.

Mr. MINOTT.—We have nothing further.

Examiner PUGH.—Nothing further being offered by either side, the case will be considered as closed, so far as the testimony is concerned. Do you desire to file a brief on either side?

Mr. DURBROW.—We would like to file a brief.

Examiner PUGH.—Complainant does not wish to file a brief, and defendant expressing the desire to do so, the defendant will be allowed until November 30th in which to file and [64] serve a brief in support of its contentions.

Mr. DURBROW.—I ask that we may have until November 30th within which to file and serve a brief. I ask it because we have so many other cases to write briefs in.

Examiner PUGH.—In view of the statement of counsel as to the writing of other briefs, defendant will be allowed until November 30th. That is all.

Whereupon at 12:30 o'clock P. M. on the 18th day of October, 1912, the hearing of the above-entitled matter was closed.

It is further certified that no written notice of the rendition of the decision in this case was ever served on defendants, or either of them, nor was service of such notice waived; and the foregoing bill of exceptions was tendered within the time allowed by law and the rules of this court.

And the said defendants within the time allowed by law and the rules of Court hereby propose the foregoing bill of exceptions containing all the proceedings had on the trial of said cause, and pray that the same be settled, allowed and signed by the Judge of this Court and made a part of the record in this cause.

Dated May 29th, 1914.

HUGH H. BROWN,
HENLEY C. BOOTH,
C. W. DURBROW,
GEO. D. SQUIRES,

Attorneys for Said Defendants, Southern Pacific
Company and Tonopah & Goldfield Railroad Co.

[Stipulation Re Bill of Exceptions.]

It is hereby stipulated that the foregoing bill of exceptions contains all of the evidence introduced at the trial of the above-entitled cause, including all exhibits offered and introduced by either party; and that the said bill of exceptions may be settled and allowed and made a part of the record herein.

Dated June 25th, 1914.

BROWN & BAER,
Attorneys for Plaintiff.
HUGH H. BROWN,
HENLEY C. BOOTH,
C. W. DURBROW,
GEO. D. SQUIRES,
Attorneys for Defendants.

[Order Settling, etc., Bill of Exceptions.]

The foregoing bill of exceptions, duly proposed and agreed upon by counsel for the respective parties, is correct in all respects and is hereby settled, approved, allowed and made a part of the record herein.

Dated this 29th day of June, 1914.

WM. C. VAN FLEET,
United States District Judge. [66]

Service of the within Bill of Exceptions is admitted this 29th day of May, 1914.

BROWN & BAER,
Attorneys for Plaintiff.

Service of the within Bill of Exceptions, as agreed upon by counsel for the respective parties, and as

settled and allowed by the Court, is hereby admitted this 17th day of July, 1914.

BROWN & BAER,
Attorneys for Plaintiff.

[Endorsed]: Filed Jul. 9, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [67]

*In the District Court of the United States, in and for
the Northern District of California, Second
Division.*

No. 15,700.

GOLDFIELD CONSOLIDATED MILLING &
TRANSPORTATION CO., a Corporation,
Complainant,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
and TONOPAH & GOLDFIELD RAIL-
ROAD COMPANY, a Corporation,
Defendants.

Petition for Writ of Error.

To the Honorable WILLIAM C. VAN FLEET, as
Judge of the Above-entitled Court:

Now come the above-named defendants, Southern Pacific Company, a corporation, and Tonopah & Goldfield Railroad Company, a corporation, by Hugh H. Brown and C. W. Durbrow, their attorneys, and say that on or about the 27th day of March, 1914, this Court entered judgment herein in favor of plaintiff and against defendants, in which judgment and the proceedings prior thereunto in this case certain errors were committed to the prejudice of these

defendants, all of which will more in detail appear from the assignment of errors which is filed with this petition.

WHEREFORE these defendants pray that a writ of error may issue in their behalf to the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this case, duly authenticated, may be sent to the said United States [68] Circuit Court of Appeals for the Ninth Circuit.

Dated this 18th day of July, 1914.

HUGH H. BROWN,
C. W. DURBROW,

Attorneys for said Defendants.

Service, by copy, of the within Petition for Writ of Error is hereby admitted this 18th day of July, 1914.

BROWN & BAER,
Attorneys for Plaintiff.

[Endorsed]: Filed Jul. 21, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [69]

*In the District Court of the United States, in and for
the Northern District of California, Second
Division.*

No. 15,700.

GOLDFIELD CONSOLIDATED MILLING &
TRANSPORTATION COMPANY, a Corpo-
ration,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
and TONOPAH & GOLDFIELD RAIL-
ROAD COMPANY, a Corporation,
Defendants.

Assignment of Errors.

Now come the above-named defendants, Southern Pacific Company, a corporation, and Tonopah & Goldfield Railroad Company, a corporation, and in connection with their petition for a writ of error, make the following assignment of errors which they aver were committed by the Court upon the trial of this cause and in the rendition of the judgment against these defendants appearing upon the record herein, to wit:

I. The Court erred in holding and deciding that the complaint of plaintiff stated facts sufficient to constitute a cause of action.

II. The Court erred in holding and deciding that the complaint stated facts sufficient to constitute a cause of action against defendants Southern Pacific Company and Tonopah & Goldfield Railroad Com-

pany, or either of said defendants.

III. The Court erred in overruling, and in not sustaining, the demurrer interposed by said defendants to plaintiff's complaint.

IV. The Court erred in holding that the decision and [70] order of the Interstate Commerce Commission, in the proceeding entitled: "The Goldfield Milling & Transportation Company, Complainant, vs. Chicago & Erie Railroad Company et al., Defendants, Docket No. 5064," which decision and order was introduced in evidence by plaintiff upon the trial of this cause, was supported by the evidence introduced before the Interstate Commerce Commission upon the hearing of said proceeding.

V. The Court erred in holding that the said decision and order of the Interstate Commerce Commission in said proceeding were valid.

VI. The Court erred in holding that plaintiff had proved that it had been injured and had sustained damages in the sum awarded by the Interstate Commerce Commission in the said decision and order in said proceeding, or in any other sum, and also in holding that said Commission's order of reparation was a *prima facie* showing sufficient to justify the Court in deciding that plaintiff was entitled to an award of damages.

VII. The Court erred in holding and deciding that said decision and order of the Interstate Commerce Commission were sufficient proof in and of themselves, without further evidence, of the damage sustained by plaintiff; and the Court erred in basing its decision awarding said damages to plaintiff upon

the said decision and order of the Commission, without requiring further proof of the loss or damage sustained by plaintiff.

VIII. The Court rendered judgment against the defendants, whereas judgment ought to have been rendered in favor of defendants and against the plaintiff.

WHEREFORE, said defendants Southern Pacific Company and Tonopah & Goldfield Railroad Company, plaintiffs [71] in error, pray that the judgment of said District Court may be reversed, and that said defendants may have judgment against plaintiff for their costs and disbursements herein expended.

HUGH H. BROWN,

C. W. DURBROW,

Attorneys for Defendants Southern Pacific Company
and Tonopah and Goldfield Railroad Company,
Plaintiffs in Error.

Service of the within Assignment of Errors is admitted this 18th day of July, 1914.

BROWN & BAER,

Attorneys for Plaintiff.

[Endorsed]: Filed Jul. 21, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [72]

*In the District Court of the United States, in and for
the Northern District of California, Second
Division.*

No. 15,700.

GOLDFIELD CONSOLIDATED MILLING &
TRANSPORTATION CO., a Corporation,
Complainant,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
and TONOPAH & GOLDFIELD RAIL-
ROAD COMPANY, a Corporation,
Defendants.

**Order Allowing Writ of Error [and Fixing Amount
of Bond].**

On this 21st day of July, 1914, came the above-named Southern Pacific Company, a corporation, and Goldfield & Tonopah Railroad Company, a corporation, defendants, by Hugh H. Brown and C. W. Durbrow, their attorneys, and filed herein and presented to this Court their petition praying for the allowance of a writ of error and an assignment of errors intended to be urged by them, praying also that a transcript of the record, proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had as may be proper in the premises. On consideration whereof this Court does allow the writ of error upon the said defendants giving bond according to law

in the sum of One Thousand (\$1,000) Dollars, lawful money of the United States, which said bond shall operate as a supersedeas bond.

Dated at San Francisco, this 21st day of July,
A. D. 1914.

WM. C. VAN FLEET,
United States District Judge.

[Endorsed]: Filed Jul. 21, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [73]

*In the District Court of the United States, in and for
the Northern District of California, Second
Division.*

No. 15,700.

GOLDFIELD CONSOLIDATED MILLING &
TRANSPORTATION COMPANY, a Corpo-
ration,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
and TONOPAH & GOLDFIELD RAIL-
ROAD COMPANY, a Corporation,
Defendants.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS, that
whereas, lately in a District Court of the United
States, in and for the Northern District of California,
Second Division, in a suit depending in said court
between the Goldfield Consolidated Milling & Trans-
portation Company, a corporation, as plaintiff, and

Southern Pacific Company, a corporation, and Tonopah & Goldfield Railroad Company, a corporation, as defendants, a judgment was rendered against the said Southern Pacific Company, a corporation, and said Tonopah & Goldfield Railroad Company, a corporation, for the sum of \$536.55, together with an attorney's fee in the sum of \$150.00 and the further sum of \$20.50 costs and disbursements, and said Southern Pacific Company, a corporation, and said Tonopah & Goldfield Railroad Company, a corporation, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit and a citation having issued directed to said Goldfield Consolidated [74] Milling & Transportation Company, a corporation, citing and admonishing it to be and appear at the session of the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, State of California, in said court, on the 21st day of August, 1914.

NOW, THEREFORE, in consideration of the premises and of such writ of error the United States Fidelity & Guaranty Company, a corporation organized and existing under the laws of the State of Maryland and having its principal place of business in the city of Baltimore, in said State, and having a paid-up capital and surplus of Two Million Dollars (\$2,000,000), duly incorporated under the laws of said State of Maryland for the purpose of making and guaranteeing and becoming surety upon bonds or undertakings required or authorized by law, and which said corporation has complied with all the re-

quirements of the laws of the State of California regulating the admission and right of said corporation to transact such business in said State, is held and firmly bound unto the above-named plaintiff, Goldfield Consolidated Milling & Transportation Company, a corporation, in the full and just sum of One Thousand Dollars (\$1,000), lawful money of the United States, to be paid to said plaintiff, Goldfield Consolidated Milling & Transportation Company, its successors or assigns, for which payment well and truly to be made, the said United States Fidelity & Guaranty Company, a corporation, binds itself by these presents.

The condition of the above obligation is such that if the said Southern Pacific Company, a corporation, and said Tonopah & Goldfield Railroad Company, a corporation, the defendants in said action, and plaintiffs in error aforesaid, [75] shall prosecute said writ of error to effect and answer all damages and costs that may be awarded against them if they fail to make their said plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the said United States Fidelity & Guaranty Company, a corporation, has caused this obligation to be signed by its duly authorized attorney in fact and its corporate seal to be here-

unto affixed at San Francisco, California, this 23d day of July, 1914.

UNITED STATES FIDELITY & GUAR-
ANTY CO.

[Seal] By JAMES H. BORLAND,
Attorney in Fact.
By W. S. ALEXANDER,
Attorney in Fact.

The above and foregoing bond upon writ of error is hereby approved, and execution stayed pending the determination of said writ.

Dated July 23d, 1914.

WM. C. VAN FLEET,
Judge.

State of California,
City and County of San Francisco,—ss.

On this 23d day of July, in the year of one thousand nine hundred and fourteen, before me, M. J. Cleveland, a Notary Public in and for the City and County of San Francisco, personally appeared James H. Borland and W. S. Alexander, known to me to be the persons whose names are subscribed to the within instrument as the attorneys in fact of the United States Fidelity and Guaranty Company, and acknowledged to me that they subscribed the name of the United [76] States Fidelity and Guaranty Company thereto, as principal, and their own names as attorneys in fact.

[Seal] M. J. CLEVELAND,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed July 23d, 1914. Walter B. Maling, Clerk. [77]

UNITED STATES OF AMERICA.

District Court of the United States, Northern District of California.

CLERK'S OFFICE.

No. 15,700.

GOLDFIELD CONSOLIDATED MILLING &
TRANSPORTATION COMPANY

vs.

SOUTHERN PACIFIC COMPANY and TON-
OPAH & GOLDFIELD RAILROAD COM-
PANY.

Praeceptum [for Transcript of Record].

To the Clerk of said Court:

Sir: Please prepare and transmit to the Circuit Court of Appeals for the Ninth Circuit, under your hand and the seal of the above-entitled court, on or before the return day of the Writ of Error issued in this cause, to wit, on or before the 21st day of August, 1914, a true copy of the record, opinion of the Court, bill of exceptions, assignment of errors, and all proceedings in this cause, together with the original writ of error and citation issued in this cause.

Dated, July 24th, 1914.

HUGH H. BROWN,
C. W. DURBROW,

Attorneys for Defendants and Plaintiffs in Error.

[Endorsed]: Filed Jul. 24, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [78]

*In the District Court of the United States, for the
Northern District of California, Second Divi-
sion.*

No. 15,700.

GOLDFIELD CONSOLIDATED MILLING &
TRANSPORTATION COMPANY, a Cor-
poration,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion, and TONOPAH & GOLDFIELD RAIL-
ROAD COMPANY, a Corporation,

Defendants.

**Certificate of Clerk U. S. District Court to Record
on Writ of Error.**

I, Walter B. Maling, Clerk of the District Court
of the United States, for the Northern District of
California, do hereby certify that the foregoing
seventy-eight (78) pages, numbered from 1 to 78, in-
clusive, to be a full, true and correct copy of the
record and proceedings in the above-entitled cause,
as the same remains of record and on file in the office
of the clerk of said court, and that the same constitute
the return to the annexed writ of error.

I further certify that the cost of the foregoing re-
turn to writ of error is \$45.60; that said amount was
paid by the attorneys for the defendant, and that

the original writ of error and citation issued in said cause are hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 21st day of August, A. D. 1914.

[Seal]

WALTER B. MALING,
Clerk. [79]

[Writ of Error (Original).]

UNITED STATES OF AMERICA,—ss.

The President of the United States, to the Honorable, the Judge of the District Court of the United States for the Northern District of California, Second Division, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, at the March, 1914, term thereof, wherein Southern Pacific Company, a corporation, and Tonopah & Goldfield Railroad Company, a corporation, are plaintiffs in error, and Goldfield Consolidated Milling & Transportation Company, a corporation, is defendant in error, and wherein Goldfield Consolidated Milling & Transportation Company, a corporation, was plaintiff, and Southern Pacific Company, a corporation, and Tonopah & Goldfield Railroad Company, a corporation, were defendants, manifest error hath happened to the great damage of the said Southern Pacific Company, a corporation, and Tonopah & Goldfield Railroad Company, a corporation, plaintiffs in error, as by their complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, on the 21st day of August, 1914, next, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according [80] to the laws and customs of the United States, should be done.

WITNESS, the Honorable WILLIAM C. VAN FLEET, Judge of the District Court of the United States for the Northern District of California, the 23d day of July, in the year of our Lord One Thousand Nine Hundred and Fourteen.

[Seal] WALTER B. MALING,
Clerk of the District Court of the United States for
the Northern District of California, Second
Division.

Allowed by

WM. C. VAN FLEET,
United States District Judge. [81]

[Return to Writ of Error.]

The answer of the Judge of the District Court of the United States, in and for the Northern District of California, Second Division.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said Court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

[Seal]

WALTER B. MALING,

Clerk.

By J. A. Schaertzer,

Deputy Clerk. [82]

Service of the within Writ of Error is admitted this 24th day of July, 1914.

BROWN & BAER,

Attorneys for Plaintiff and Defendant in Error.

[Endorsed]: No. 15,700. District Court of the United States for the Northern District of California, Second Division. Southern Pacific Company et al., Plaintiffs in Error, vs. Goldfield Consolidated Milling & Transportation Company, Defendant in Error. Writ of Error. Filed Jul. 24, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[Citation on Writ of Error (Original).]

UNITED STATES OF AMERICA,—ss.

The President of the United States, to Goldfield Consolidated Milling and Transportation Company, a Corporation, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, on the 21st day of August, 1914, being within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States, for the Northern District of California, Second Division, wherein Southern Pacific Company, a corporation, and Tonopah & Goldfield Railroad Company, a corporation, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Southern Pacific Company, a corporation, and Tonopah & Goldfield Railroad Company, a corporation, plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, Second Division, this 23d day of July, A. D. 1914.

WM. C. VAN FLEET,
United States District Judge. [83]

Service of the within Citation is admitted this 24th day of July, 1914.

BROWN & BAER,
Attorneys for Plaintiff and Defendant in Error.

[Endorsed]: No. 15,700. District Court of the United States, for the Northern District of California, Second Division. Goldfield Consolidated Milling & Transportation Co., Plaintiff, vs. Southern Pacific Company et al., Defendants. Citation. Filed Jul. 24, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[Endorsed]: No. 2467. United States Circuit Court of Appeals for the Ninth Circuit. Southern Pacific Company, a Corporation, and Tonopah & Goldfield Railroad Company, a Corporation, Plaintiffs in Error, vs. Goldfield Consolidated Milling and Transportation Company, a Corporation, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Northern District of California, Second Division.

Received and filed August 21, 1914.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.